

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC 20591

NOV 13 1989

Served:

FAA Order No. 89-0004

FEDERAL AVIATION ADMINISTRATION,

Complainant,

vs.

RICHARD WILLFORD METZ,

Respondent.

Docket No. CP89CE0003

ORDER

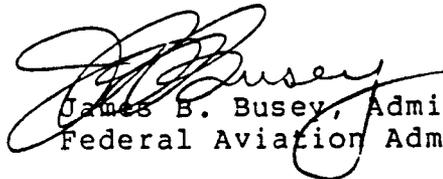
This case comes before me on a record which is uncertain at best. It is clear that Respondent requested a hearing. It is not so clear as to whether Respondent ever answered the allegations against him. Similarly, it is clear that FAA counsel erroneously (prematurely) issued an Order Assessing Civil Penalty and subsequently withdrew same. It is not so clear that the letter informing Respondent of the withdrawal was fully understood.

Among other things, Respondent suggests in his notice of appeal that his request for a hearing was timely, that the letter he received informing him of the withdrawal of the Order Assessing Civil Penalty amounted to advice that the case was being dropped, and that he was never provided with a copy of the FAA Rules of Practice.

The Administrative Law Judge (ALJ) found sufficient cause to dismiss the case and to deny reconsideration of his decision although it is clear that the ALJ was not happy with the result. While I have no reason to doubt that such a decision was warranted by the facts as they were known to the ALJ, I am most reluctant to affirm when I am uncertain as to which of the suggestions made by Respondent in his notice of appeal, if any, may have merit.

Although Respondent has not submitted a separate appeal brief, I have determined that justice demands that I regard the Respondent's letter of July 28, 1989, as both a notice of appeal and a brief on the merits. In my view, that letter provided notice of Respondent's intent to challenge the ALJ's decisions, and it can be regarded as satisfying the requirements for an appeal brief set forth in section 13.233(d)(1) of the Federal Aviation Regulations, 14 CFR § 13.233(d)(1).^{1/} That being the case, FAA counsel is ordered to respond to that brief within 30 days of the date on which this order is issued.

Issued this 9th day of November 1989.


James B. Busey, Administrator
Federal Aviation Administration

^{1/} Section 13.233(d)(1), 14 CFR § 13.233(d)(1), provides in pertinent part:

A party shall set forth, in detail, the party's specific objections to the initial decision or rulings in the appeal brief. A party also shall set forth, in detail, the basis for the appeal, the reasons supporting the appeal, and the relief requested on appeal.